IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1056 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJSHREE ENTERPRISE - Petitioner(s)

Versus

GUJARAT ELECTRICITY BOARD & 1 - Respondent(s)

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Appearance :

MR RD DAVE for Petitioner(s) : 1,

MR MD PANDYA for Respondent(s) : 1,

NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/01/2006

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioner has payed for appropriate writ, order and/or directions directing the respondents to grant electric connection bearing Consumer No.27473/00360/7 and No.27473/00361/5 forthwith, without insisting for the payment of outstanding dues payable by the erstwhile owner M/s.Belt House Pvt.Ltd. By way of amendment,the petitioner has prayed for appropriate writ, order and/or directions considering the respondents to grant re-connection of the electricity supply to the petitioner forthwith with regard to the Consumer Services on payment of the re-connection charges of Rs.22=00 or any other such amount as amended in Condition of

Supply for reconnection and to quash and set aside the demand of Rs.92,000 approximately raised by the respondents for giving electricity connection to the petitioner.

2.It is the case on behalf of the petitioner that the petitioner has purchased the property of one M/s.Belt House Pvt.Ltd. in a public auction held by the Gujarat State Financial Corporation and thereafter, the petitioner applied for re-connection. However, the petitioner was informed that unless the petitioner clears the dues of the erstwhile owner M/s.Belt House Pvt. Ltd., the electricity connection will not be re-connected and/or there will not be electricity supply. The petitioner has relied upon the judgement of the Hon'ble Supreme Court in the case of ISHA MARBLES VS. BIHAR ELECTRICITY BOARD & ANR, reported in 1995(2) GLH 134 : JT 1995 (2) SO 626 in support of his submission that in

absence of any statutory provisions, the respondents cannot insist upon the petitioner to pay the dues of the erstwhile owner. That while issuing notice in the present petition, the learned Single Judge of this Court vide order dtd.11/2/1999,directed the respondents to decide the application of the petitioner for electricity connection, by passing a speaking order. It appears from the record that thereafter, by communication dtd.23/4/1999, the respondents decided the application and decided to grant the electricity connection. However, directed that unless the petitioner pays / deposits an amount of Rs.92,650=00 towards the substation, augmentation charges, transformer charges, service condition charge, security deposit, service connection charge, the petitioner will not be granted electricity connection. By way of amendment, the petitioner has challenged the said demand on the ground that the same is illegal and treating the case

of the petitioner / application of the petitioner as new connection rather treating it for re-connection. While admitting the present petition, the learned Single Judge of this Court granted interim relief in terms of para 15(B) on condition that the petitioner deposits with the respondent Board the amount of Rs.92,650=00 as demanded in the impugned notice at Annexure-I to the petition and comply with the other requirements and this deposit shall be abide the final outcome of this petition. It is reported that pursuant to the said order, the petitioner has deposit an amount of Rs.92,650=00 and the petitioner is granted re-connection / electricity connection and therefore, the only question now which is required to be considered is with regard to the demand of Rs.92,650=00 insisted by the respondents treating the application of the petitioner for new connection.

3.Mr.R.D. Dave, learned advocate appearing on behalf of the petitioner has vehemently submitted that the action of the demand made by the respondent for an amount of Rs.92,650=00 is based upon considering the application of the petitioner for new connection and instead of that, the same should have been considered as for re-connection, as so far as the charges which are insisted upon by the respondent Board i.e. with regard to transformer charges etc, treating the same for fresh connection is absolutely illegal and contrary to the judgement of the Hon'ble Supreme Court in the case of ISHA MARBLES (Supra). Mr.Dave has also relied upon the un-reported judgements of this Court rendered in the Special Civil Application Nos.8990/95, 7453/95 with Civil Application No.2550/95 and in Special Civil Application No.4436/96. Consequently, he has requested to allow the present petition.

4.Ms.Maya Desai, learned advocate appearing on behalf of the respondents while opposing the present petition has submitted that the insistence and the demand made by the respondents for an amount of Rs.92,650=00 is just and in accordance with law. She has also submitted that if more power / load is required, in that case even the same transformer cannot be insisted upon and for that the petitioner may have to pay augmentation charges. She has also further submitted that the actions of the respondents in treating the case / application of the petitioner for fresh connection is in accordance with law and in consonance with the Conditions of Supply.

5.Heard learned advocates appearing on behalf of the parties. As stated above, the only question which is required to be considered is as to whether the application of the petitioner is to

be treated for fresh electricity connection or for re-connection. This question came to be considered by this Court in the case of M/s.Om Wirer Pvt.Ltd. Vs. Dy.Engineer GEB. While passing order dtd.13/12/1995 in Special Civil Application No.7453 of 1995 with Civil Application No.2550 of 1995, relying upon the decision of the Hon'ble Supreme Court in the case of Isha Marbles (Supra). This Court has negatived the contention on behalf of the respondent that the connection to the subsequent purchaser will be a fresh connection. The learned Single Judge of this Court has observed as under;-

> “The grievance of the petitioner is that the respondent Board has rejected the application dated 14th June, 1995 of the petitioner Company for temporary connection on the ground that the dues of the previous consumer M/s.Nigam Wires Pvt.Ltd, about Rs.2,00,811-00 were not paid. The petitioner has prayed for a

direction on the respondents for supply of electricity for their factory. The stand of the respondent Board that the petitioner could be given electricity supply if the dues of the previous consumer were paid up, cannot be sustained, in view of the decision of the Honourable Supreme Court in the case of Isha Marbles Vs. Bihar State Electricity Board and another, reported in JT 1995 (2) SO 626, in which the Supreme Court held that the auction purchaser cannot be saddled with the contractual liability of the original defaulter. It was held that though the auction purchaser had asked for electricity connection as a new connection, it cannot be regarded as a new connection and it was only a re-connection, since the premises had already been supplied with the electricity supply.

“It was sought to be contended on behalf of the respondent Board that the connection to the petitioner will be a fresh connection. Such argument is not open in view of what has been stated in the Supreme Court in the case of Isha

Marbles (Supra) in paragraphs 46 and 56 of the judgement. The Supreme Court has categorically held that, though the purchaser asked for electricity connection as a new connection. It cannot be regarded as a new connection, in view of the fact that the electricity was already supplied in the same premises and such connection was a reconnection of electricity. It was held by the Supreme Court that

“It is true that it was the same premises to which reconnection is to be given. Otherwise, with the change of every ownership new connections correct line of approach as such a situation is brought about by the inaction of the Electricity Board in not recovering the arrears as and when they fall due or not providing itself by adequate deposit”.

Therefore, there is no scope of arguing that the electricity supply which was to be given in the same premises taken in public auction by the petitioner would amount to reconnection.”

6.In view of the aforesaid decision of this Court the contention on behalf of the respondents that the electricity connection to the petitioner shall be treated as a fresh connection cannot be accepted. It is true that treating the case of the petitioner as a re-connection if other charges are required to be paid by the petitioner, the petitioner will have to pay.

7.For the reasons stated hereinabove, the petition succeeds, the action of the respondents in treating the case / application of the petitioner for electricity connection as a fresh connection is hereby quashed and set aside and it is held that the case / application of the petitioner be treated for re-connection. The respondents are hereby directed to re-calculate the amount to be paid by the petitioner treating the case of the petitioner for re-connection and the said

exercise to be done within a period of THREE MONTHS from the date of receipt of this order and in view of the fact that the petitioner has already deposited an amount of Rs.92,650=00 pursuant to the order passed by this Court i.e. on the basis of the demand made by the respondents, whatever the amount the petitioner is required to be refunded after re-calculation is made by the respondents, as stated above, the balance amount shall be refunded to the petitioner and/or the same shall be adjusted in subsequent bill. Rule is made absolute to the aforesaid extent with no order as to costs. D.S. Permitted.

(M.R.SHAH,J.)

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